42227 SERVICE DATE – APRIL 23, 2012
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SURFACE TRANSPORTATION BOARD

DECISION

Docket No. NOR 42133

SIERRA RAILROAD COMPANY AND SIERRA NORTHERN RAILWAY
v.
SACRAMENTO VALLEY RAILROAD COMPANY, LLC, MCCLELLAN BUSINESS PARK, LLC, AND COUNTY OF SACRAMENTO

Digest:[1] In this decision, the Board denies a motion to dismiss a complaint filed by Sierra Railroad Co. and Sierra Northern Railway (collectively, Sierra). Sierra alleges that Sacramento Valley Railroad, McClellan Business Park, and the County of Sacramento are interfering with Sierra's ability to provide rail service within the McClellan industrial park. This decision also denies Sierra's motion to compel the production of certain information requested in discovery.

Decided: April 19, 2012

On December 7, 2011, Sierra Railroad Company, a noncarrier, and its wholly-owned subsidiary, Sierra Northern Railway, a Class III rail carrier (SERA) (collectively, Sierra), filed a complaint under 49 U.S.C. §§ 10702(2) and 10704(b), alleging that Sacramento Valley Railroad Company, LLC (SAV), McClellan Business Park, LLC (McClellan), and the County of Sacramento (County) (collectively, respondents) failed to maintain reasonable practices by interfering with SERA's common carrier obligation to provide service within the McClellan industrial park in McClellan, Cal., while at the same time failing to seek third party, or "adverse," discontinuance of SERA's operating authority. On December 27, 2011, respondents filed an answer to the complaint.

On January 25, 2012, respondents filed a motion to dismiss the complaint in its entirety and also to dismiss the County and McClellan as parties to the complaint. Sierra replied on February 13, 2012, in opposition to respondents' motion. For the reasons discussed below, respondents' motion to dismiss the complaint in its entirety will be denied, and the Board will defer its determination as to the motion to dismiss the County and McClellan as parties to the complaint.

[1] The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

On February 27, 2012, Sierra filed a motion to compel, claiming that respondents failed to provide meaningful responses to eight interrogatories, eight document production requests, and one request for admission. Respondents replied on March 19, 2012, in opposition to Sierra's motion. As discussed below, Sierra's motion to compel will be denied.

BACKGROUND

In 1995, the McClellan Air Force Base was ordered by the Department of Defense to be closed. As portions of the base were vacated, the base properties, including seven miles of railroad tracks within the facility, were conveyed to the County. In 2001, the County determined that its interest in developing the base properties (McClellan Park) for commercial purposes would be aided by the introduction of common carrier rail service. The County chose the Yolo Shortline Railroad (Yolo) (now, SERA)[2] to render common carrier rail service within McClellan Park and entered into a License and Operating Agreement with Yolo in 2001.[3] The agreement granted Yolo exclusive occupancy and operating rights on all of the operating trackage at McClellan Park. First Yolo, then SERA, rendered rail service on the line from 2001 to 2008. In the meantime, the County contracted with McClellan to develop and operate McClellan Park.

In 2007, McClellan notified SERA that it would not renew SERA's 2001 license and operating agreement, which by its terms could be renewed annually, and would extend invitations to bid for the rendering of rail service to McClellan Park. The contract subsequently was awarded to SAV.[4]

Sierra asserts that SERA remains a rail carrier authorized to provide service on the lines in McClellan Park and that none of the respondents has sought an adverse discontinuance of service from the Board to terminate SERA's Board authority to operate on the track. Sierra asserts that, notwithstanding that SERA continues to be a rail carrier authorized by the Board to operate on the lines, respondents will not allow SERA onto the tracks to fulfill its common carrier obligation. Sierra alleges it is an unreasonable practice for respondents to "deny SERA the right to operate on McClellan's seven miles of railroad tracks, on the one hand, and, on the other hand, fail to file a third-party or adverse discontinuance application" to terminate SERA's operating authority over those tracks. Compl. ¶ 21.

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[2] See Sierra R.R.—Acquis. of Control Exemption—Yolo Shortline R.R., FD 34351 (STB served June 11, 2003). In 2003, Yolo was renamed the Sierra Northern Railway.

[3] Yolo Shortline R.R.—Acquis. & Operation Exemption—Cnty. of Sacramento, Cal., FD 34018 (STB served Mar. 27, 2001).

[4] See Sacramento Valley R.R.—Operation Exemption—McClellan Bus. Park LLC, FD 35117 (STB served Feb. 14, 2008). SAV's parent company, Patriot Rail Corporation (Patriot), and Sierra are currently involved in litigation before the U.S. District Court for the Eastern District of California. Among other things, Sierra alleges that Patriot relied on proprietary financial and operating data received from Sierra to organize SAV and bid against Sierra for the right to provide service to McClellan Park.

As noted, in a motion filed on January 25, 2012, respondents request that the Board dismiss the complaint in its entirety on the ground that they were under no obligation to seek an adverse discontinuance of SERA's operating authority. Respondents also request that, should the Board not dismiss the complaint in full, the Board dismiss the County and McClellan as respondents because they are not rail carriers subject to the Board's jurisdiction.

Also as noted, Sierra filed a motion to compel discovery on February 27, 2012, essentially seeking information about the process that led to SAV's selection as the new operator. In their March 19, 2012 reply, respondents oppose the motion, arguing that this information is relevant only to the relief Sierra is seeking in the pending court action. See supra note 4.

PRELIMINARY MATTER

On April 4, 2012, the Board granted the joint motion for extension of the procedural schedule that was served on January 23, 2012. The original procedural schedule set April 9, 2012, as the due date for opening evidence and arguments. Sierra and respondents stated that they would submit a revised procedural schedule promptly upon service of the Board's decision on the motion to compel. Accordingly, Sierra and respondents will be required to submit a revised procedural schedule no later than 10 days after service of this decision.

DISCUSSION AND CONCLUSIONS

Motion to Dismiss. The Board may dismiss a complaint if it does not state reasonable grounds for investigation and action. 49 U.S.C. § 11701(b). In considering a motion to dismiss, we construe the factual allegations in a light most favorable to the complainant. See Sierra Pac. Power Co. v. Union Pac. R.R., NOR 42012 (STB served Jan. 26, 1998). The party seeking dismissal bears the burden of proof. We will dismiss a complaint only when we find that there is no basis on which we could grant the relief sought.

Dismissal of the complaint in its entirety. Respondents argue that they had no obligation to file an adverse discontinuance of SERA's common carrier obligation and that the complaint—which is based on a claim that it is unreasonable for respondents to fail to seek adverse discontinuance while also blocking SERA's ability to operate—therefore should be dismissed. They contend that SERA could have obtained the right to terminate its common carrier obligation on its own, and they cite a separate, unrelated proceeding where SERA sought revocation of a lease and operation exemption that authorized SERA to provide service over a line owned by Union Pacific Railroad Company in Santa Cruz, Cal. (the Lease Proceeding).[5] Accordingly, respondents assert that the Board should require SERA to follow the same procedure here to terminate its common carrier obligation.

The relief SERA sought in the Lease Proceeding is not analogous to the complaint here. In this case, SERA does not wish to terminate its own operating authority as it does in the Lease

[5] See Sierra N. Ry.—Lease & Operation Exemption—Union Pac. R.R., FD 35331.

Proceeding. Nor does the Lease Proceeding have any bearing on how Sierra pursues its complaint here. A rail carrier may seek authority to discontinue its operations under 49 U.S.C. § 10903; however, the statute does not require it to do so under the circumstances presented here. Moreover, if an owner of a line wishes to remove any doubt about a common carrier operator's right to maintain a presence on a line, it has a readily available remedy: an adverse discontinuance. Given the novelty of the issue here, we find that Sierra offers a reasonable basis for further Board consideration of its claim. Accordingly, respondent's motion to dismiss the complaint in full will be denied.

Dismissal of the County and McClellan. Respondents also request that the Board dismiss the County and McClellan as parties to the complaint because neither the County nor McClellan is a rail carrier subject to the Board's jurisdiction. They note that the statutes under which Sierra makes its complaint apply to actions by rail carriers. They further note that neither the County nor McClellan holds itself out to provide rail service.

The County's mere act of leasing its line to Sierra did not confer any common carrier obligation on the County. See Wis. Cent. v. STB, 112 F.3d 881 (7th Cir. 1997). However, the Board has in the past examined the relationship between line owners and rail carriers to determine whether a line owner acquired a common carrier obligation because of its degree of control and potential interference with the rail carrier operating over the line. See Anthony Macrie—Continuance in Control Exemption—N.J. Seashore Lines, Inc., FD 35296 (STB served Aug. 16, 2010) (citing Maine, Dep't of Transp.—Acquis. & Operation Exemption—Me. Cent. R.R., 8 I.C.C.2d 835 (1991)). In light of this precedent, the Board would benefit from a more complete record on the County's and McClellan's degree of control over and potential interference with SERA's operations. Therefore, we will defer our determination as to the Board's jurisdiction over the County and McClellan until opening evidence and argument and replies are submitted by the parties.

We emphasize that we do not find in this decision that the County and McClellan are rail carriers subject to the Board's jurisdiction. Sierra ultimately has the burden of showing that the respondents are rail carriers subject to the Board's jurisdiction. To this end, we will require Sierra to submit into the record as part of its case in chief SERA's license and operating agreements with the County and McClellan, as the content of those documents may be a factor in our decision on the merits.

Motion to Compel Discovery. Parties are entitled to discovery "regarding any matter, not privileged, which is relevant to the subject matter involved in a proceeding." 49 C.F.R. § 1114.21(a)(1). However, the Board requires "more than a minimal showing of potential relevancy" before granting a motion to compel discovery. Potomac Elec. Power Co. v. CSX Transp., Inc. (PEPCO), 2 S.T.B. 290, 292 (1997). Furthermore, parties must demonstrate a real, practical need for the information. Coal Rate Guidelines, Nationwide, 1 I.C.C.2d 520, 548 (1985). Because Sierra's discovery requests have not met this standard, its motion to compel discovery will be denied.

This proceeding examines two narrowly defined issues: whether it is unreasonable for respondents to fail to seek adverse discontinuance while also allegedly blocking SERA's ability to operate; and whether the County and McClellan are rail carriers subject to the Board's jurisdiction. Sierra has not shown that the information it seeks would lead to information relevant to showing that respondents unreasonably interfered with SERA's ability to provide common carrier service. Rather, Sierra seeks information primarily about the process that led to SAV's selection as the new operator. Such information is not relevant to the legal and factual questions at issue in this proceeding.

Nor has Sierra shown that the information sought would be relevant in determining whether the County or McClellan is a common carrier subject to our jurisdiction. Sierra claims that the information it seeks, such as fees and payments made by SERA to the County and McClellan, supports its claim that the County and McClellan are rail carriers. Such information, however, is not likely to lead to relevant information with regard to whether the parties are rail carriers. While the license and operating agreements that Sierra seeks in Document Production Request No. 1 may lead to admissible relevant evidence, we will not compel respondents to produce these documents because Sierra has in its possession its license and operating agreements with the County and McClellan, as well as the agreement between McClellan and SAV.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Respondents' motion to dismiss the complaint in its entirety is denied. Respondents' motion to dismiss the County and McClellan as parties to the complaint will be determined at a later date.

2. Sierra's motion to compel is denied.

3. Sierra shall submit the license and operating agreements between SERA and the County and McClellan with its opening evidence and arguments.

4. Sierra and respondents shall submit a revised procedural schedule by May 3, 2012.

5. This decision is effective on its date of service.

By the Board, Chairman Elliott, Vice Chairman Mulvey, and Commissioner Begeman.